UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IBG LLC,
INTERACTIVE BROKERS LLC, TRADESTATION GROUP, INC., and
TRADESTATION SECURITIES, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

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Case CBM2016-00032
Patent 7,212,999 B2

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Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

On August 30, 2016, IBG LLC, Interactive Brokers LLC, TradeStation Group, Inc., and TradeStation Securities, Inc. (collectively, "Petitioner") filed a Request for Rehearing (Paper 19, "Req. Reh'g") of our Decision (Paper 16, "Dec.") denying *inter partes* review of Petitioner's challenge to U.S. Patent No. 7,212,999 B2 (Ex. 1001, "the '999 patent") based upon grounds of obviousness based on a combination of TSE[1], Schott[2], and Subler[3].[4]

Petitioner's Request alleges that we misapprehended or overlooked arguments and evidence, presented in the Petition, concerning the rationale to combine TSE, Schott, and Subler. Req. Reh'g 1–13. Petitioner argues that we overlooked that Petitioner's evidence that a person of ordinary skill in the art ("POSITA") would have made the proposed combination because (1) "swapping TSE's well-known, click-based order entry for Subler's equally well-known, drag-and-drop order entry since it is nothing more than a simple substitution that yields predictable results;" (2) "increasing the efficiency of order entry;" and (3) "decreasing the complexity of order entry." *Id.* at 2. Petitioner also argues that we misapprehended the combination proposed in the Petition (Paper 1, "Pet."). Req. Reh'g 11–13.

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[1] TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1016) ("TSE").
[2] U.S. Patent No. 5,619, 631 (issued Apr. 8, 1997) (Ex. 1019) ("Schott").
[3] U.S. Patent No. 5,646,992 (issued July 8, 1997) (Ex. 1020) ("Subler").
[4] Our Decision granted *inter partes* review with respect to the challenge based on unpatentability under 35 U.S.C. § 101.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." Abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988). In its request for rehearing, the dissatisfied party must identify the place in the record where it previously addressed each matter it submits for review. 37 C.F.R. § 42.71(d).

III. ANALYSIS

We did not misapprehend or overlook arguments and evidence concerning the rationale to combine TSE, Schott, and Subler. *See* Dec. 20–26. For example, our Decision indicates that the Petition asserts that a POSITA would have made the proposed combination because it "would have been an obvious design choice and nothing more than simple substitution of one known GUI technique (point-and-click) for another (drag-and-drop)" or it "is nothing more than combining prior art elements according to known method[s] to yield predictable and desirable results, such as increasing the efficiency and decreasing the complexity of order entry in TSE." Dec. 25 (quoting Pet. 51–54). Our Decision also indicates that we considered the portions of the Petition that included the testimony of Mr. Roman[5] and quoted portions of Cooper[6] and Shneiderman[7] to support

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[5] Ex. 1012 (Declaration of Mr. Kendyl A. Roman).

[6] ALAN COOPER, ABOUT FACE: THE ESSENTIALS OF USER INTERFACE DESIGN (1st ed. 1995) (Ex. 1029).

[7] BEN SHNEIDERMAN, DESIGNING THE USER INTERFACE: STRATEGIES FOR

Petitioner's proposed rationale. *See, e.g.*, Dec. 25 (citing Pet. 52–53 (quoting Cooper)).

As indicated in our Decision, we considered Petitioner's arguments and evidence but were not persuaded that a POSITA would have combined TSE, Schott, and Subler in the manner proposed in the Petition. The Decision states:

> We disagree that the proposed combination is nothing more than an obvious design choice or nothing more than combining prior art elements according to a known method to yield predictable and desirable results of increasing the efficiency and decreasing the complexity of order entry. As can be seen from the annotated figure above, the proposed combination results in a more complex order entry system because it requires not merely the substitution of a point-and-click technique for a drag-and-drop technique but the addition of a window, such as Subler's Viewer window 334, having the order icons to drag-and-drop.

Dec. 25 (referring to a figure from page 49 of the Petition, reproduced on page 24 in the Decision). Petitioner effectively disagrees with our Decision, which is not an appropriate basis for rehearing.

In addition, Petitioner argues that we misapprehended the combination proposed in the Petition. According to Petitioner, the Petition "never suggests '[u]sing the aggregate quantity of orders in the market place as the order icons, which are dragged-and-dropped onto the Board/Quotation Screen to place an order.'" Req. Reh'g 11 (alteration in original) (quoting Dec. 26).

Petitioner is correct that the Petition does not suggest dragging and dropping the aggregate quantity of order number displayed on TSE's

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EFFECTIVE HUMAN-COMPUTER INTERACTION (3d ed. 1998) (Ex. 1030).

Board/Quotation Screen to place an order, when addressing the claimed selecting and moving step. *See* Pet. 46–54. The Petition suggests modifying TSE so that a user can select a quantity indicator, such as "5," from a window of quantity indicators and move it with a pointer of a mouse to a location associated with a price in column 11 of the Board/Quotation Screen of TSE to place an order. *See id.* Our Decision recognizes this. *See* Dec. 24–25. The Decision points out that the Petition relies upon the aggregate quantity of order number displayed on TSE's Board/Quotation Screen, for the claimed step of displaying an order icon. *See* Dec. 26 (citing Pet. 43–45 (discussing the claimed displaying step)). The Decision points to this as a further example of why Petitioner's combination appears to be based improperly on hindsight. *See id.*

 Accordingly, we are not persuaded of error in our Decision.

IV. ORDER

 For the reasons given, it is

 ORDERED that Petitioner's Request for Rehearing is *denied.*

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